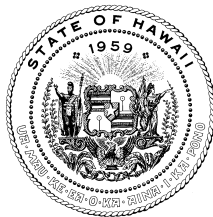


LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**MINUTES  
MAUI/LANAI ISLAND BURIAL COUNCIL MEETING**

**DATE: THURSDAY, DECEMBER 14, 2006**  
**TIME: 9:00 A.M.**  
**PLACE: COUNTY OF MAUI**  
**PLANNING DEPARTMENT**  
**KAULANA PAKUI BUILDING 1<sup>ST</sup> FLOOR**  
**250 S. HIGH STREET**  
**WAILUKU, HI 96793**

**ATTENDANCE:**

**Members:**

Charles Maxwell, Chair  
Dana Naone Hall, Vice-Chair  
Leslie Kuloloio  
William Frampton  
Edward Kaahui  
Scott Fisher  
Pua Paoa

**Absent:**

Kema Kanakaole (excused)  
Keeaumoku Kapu (excused)  
Mei Lee Wong (excused)

**Staff:**

Kawika Farm, Clerk Stenographer II  
Vince Kanemoto, Deputy Attorney General  
Melissa Kirkendall, Maui Archaeologist  
Hinano Rodrigues, Cultural Historian  
Jenny Pickett, Maui Assistant Archaeologist

**Guest:**

James P. Sparke	Jon Clifft
Joey Tyrell	Jon Wilson
Mike Dega	Hazel Owens
Rob Hoonan	Lisa Rotunno-Hazuka
Kenneth Bounlangsy	Michael Conway
Roderick Fong	Dean Frampton

Dave Ward

## **I. OPENING REMARKS**

Maui/Lanai Islands Burial Council (MLIBC) Chair, Charles Maxwell called the meeting to order at 9:30am. Leslie Kuloloio gave the *pule wehe*.

## **II. APPROVAL OF MINUTES**

October 31, 2006

Dana Hall clarified the first paragraph on page 4. D. Hall said to insert the words “Yagi subdivision” between the words “the” and “property” of the third sentence of the first paragraph on page 4. D. Hall said a portion of the cultural layer would be preserved on the Sparke property. D. Hall said the same cultural layer also extended into the adjoining *mauka* property which has a burial that had been previously identified.

**D. Hall moved and William Frampton seconded, “that the minutes of the October 31, 2006 Maui/Lanai Islands Burial Council meeting be approved as revised and clarified.”**

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

## **III. BUSINESS**

### **A. INADVERTENT BURIAL DISCOVERIES AT GRAND WAILEA HOTEL, PAAEHU AHUPUAA, MAKAWAO DISTRICT, ISLAND OF MAUI, TMK: 2-1-8: PORTION 109**

**Information/Recommendation:** Update on inadvertent discovery of multiple primary burials as well as human remains encountered in disturbed contexts.

Lisa Rotunno-Hazuka of Archaeological Services Hawaii (ASH) introduced herself and said her firm represented the Grand Wailea. L. Hazuka introduced Robert Hoonan, the director of facilities and management at the Grand Wailea, Michael Conway, the project engineer for the Grand Wailea, Jon Clifft, Joey Tyrell and Kenneth Boulangsy, all of Jon Clifft construction for the Grand Wailea. L. Hazuka said the subject agenda item was brought before the council at last month’s MLIBC meeting because burials were inadvertently discovered during mass excavation to install a multi-ceptor unit. L. Hazuka said the multi-ceptor would [serve to] receive all the grease and sewage from the Grand Wailea [and two properties located north of the Grand Wailea, the Marriot and the Wailea Beach Villas]. L. Hazuka said excavation for the multi-ceptor was at a depth of about [12 feet]. L. Hazuka said ASH identified an intact layer and intact [primary] burials at the current depth of the base of the multi-ceptor. L. Hazuka said the first nine feet of excavation was in previously disturbed fill. L. Hazuka said ASH also identified human skeletal remains in the nine feet of previously disturbed fill. L. Hazuka said ASH identified at least 10 individuals within the disturbed context of the fill. L.

Hazuka said two more individuals were identified in back dirt piles and mentioned there were 25 more piles which needed to be screened. L. Hazuka said ASH anticipated encountering more human skeletal remains during the screening of additional piles of dirt. L. Hazuka said there were six confirmed in situ burials and four probable burials within the intact layer of the excavated hole for the multi-ceptor.

D. Hall asked what the approximate measurements of the excavated hole for the multi-ceptor were. L. Hazuka said the hole was about 37 feet wide by 66 feet long and about [12] feet deep. L. Hazuka said the multi-ceptor needed to be at a depth of 30 feet in order to work, because the multi-ceptor needed to tie into the existing sewer lines which were at a depth of 30 feet. W. Frampton asked if the sewer lines were currently buried at 30 feet to which L. Hazuka answered yes. D. Hall wanted to know when the sewer lines were installed. R. Hoonan said a sewer pump station in the [Grand Wailea] area had been upgraded prior to the construction of the Grand Wailea. R. Hoonan thought the sewer lines were installed during the 70s, but mentioned he was not involved with the upgrade of the pump station, or the construction of the Grand Wailea at the time. D. Hall asked if a tremendous amount of fill was brought into the area during the construction of the Grand Wailea. R. Hoonan said he was aware that large amounts of fill had been brought into the area of the Grand Wailea during its construction, but R. Hoonan could not comment [if fill had been brought into] the specific location for the multi-ceptor because he was not sure.

L. Hazuka said the council had asked that other alternatives for the multi-ceptor be explored at last month's MLIBC meeting. Subsequent to the MLIBC meeting on October 31, 2006, R. Hoonan said he and M. Conway had met with the county during the first week of November to discuss other alternatives to the multi-ceptor. R. Hoonan said they had an informative meeting with the county and the county had asked for a formal request for alternatives for the multi-ceptor be placed in writing. R. Hoonan said a formal request was submitted to the county on November 17, 2006 and mentioned he had a meeting with the director of public works today at 3:00 pm to discuss alternative technologies. R. Hoonan said he had asked M. Conway to attend today's meeting to discuss other location sites for the multi-ceptor as well as some of the history and research that went into the project.

M. Conway said he was approached by the Grand Wailea in 2002 to investigate the possibilities to comply with a county mandate that required grease interceptors to be installed at all restaurants. Prior to the mandate, M. Conway said the current grease traps were inefficient due to a lack of maintenance which resulted in grease flowing into the public sewer system and treatment plants which caused sewer spills into the ocean and other public areas. M. Conway said the mandate had been created because the federal government had given the county a great deal of money to construct treatment plants. M. Conway said the federal government did not feel the county was operating in a conscientious manner and wanted its money back. M. Conway said the county could not afford to repay the federal government which obligated the county to figure out a way to meet the requirements set by the federal government.

M. Conway said the plumbing code only had grease traps in existence at the time. M. Conway said a grease trap was a little box which had a flow control valve that limited the amount of material which flowed through the box. M. Conway said the flow control valve also added bubbles which caused the grease to rise to the top of the box which allowed the grease to be scooped out through manual labor. M. Conway said the grease traps were problematic because people failed to remove the grease once it rose to the top of the box, largely because the grease smelled worse than a cesspool. M. Conway said the grease traps should have been monitored daily in order to operate efficiently during initial installation and at least once or twice a week eventually. M. Conway said removing grease from the grease trap, was simply a job people did not want to do which caused sewage spills, which led the county to alter the plumbing code and required restaurants to install grease interceptors.

M. Conway said grease interceptors were larger than grease traps and had the ability to have grease mechanically pumped out of the interceptors, as opposed to needing the grease to be manually removed. M. Conway said grease traps worked efficiently when properly maintained. M. Conway said counties throughout the country enforced a mandate which required the installation of interceptors because counties' could not trust people to maintain grease traps. M. Conway said extensive research needed to demonstrate exactly why an interceptor could not be installed in order for the county to even consider an alternative solution.

M. Conway referred to a display board depicting a plan view map of the Grand Wailea and said that one inch equaled about eighty feet. M. Conway said the Grand Wailea had seven restaurants at different locations on the property which were each required by the county to have a large interceptor installed. M. Conway said the physical layout of the Grand Wailea would have restricted vehicular access to the interceptors, if the interceptors had been installed near each of the seven restaurants. M. Conway said that if trucks could not service the interceptors to pump the grease out, then the Grand Wailea faced the same problem it had with grease traps, which was relying on people to manually scoop the grease out. M. Conway mentioned the interceptors would operate more efficiently if the interceptors were installed in an area where the water ran hottest which was nearest to the restaurants. M. Conway said hot water helped grease stay a float and allowed the grease to flow smoother. M. Conway said it made sense for the interceptors to be installed as close to the restaurants as possible but reminded the council that the physical layout of the Grand Wailea made it physically impractical to get a machine to the interceptor to pump out the grease.

M. Conway said he and R. Hoonan started a process to convince the county that individual grease removing devices were better suited for the Grand Wailea. M. Conway said the county was very hesitant to permit alternatives to the interceptors. M. Conway said R. Hoonan researched the problem and thought the multi-ceptor unit was a system that would work for both the county and the Grand Wailea. M. Conway said the multi-ceptor needed to be installed near the existing pump station in order to work. M. Conway said the pump station just happened to be constructed in the early 70s where it currently existed. M. Conway acknowledged development in the early 70s did

not pay a great deal of attention to the sensitivity issues of what was culturally and/or archaeologically present in the area. M. Conway identified the sewer lines installed in the 70s on the plan view map and said the sewer lines were at a depth of 30 feet. M. Conway said the sewer lines were installed at 30 feet to utilize gravitational flow, which caused water to run downhill which ultimately reduced the amount of pump stations needed for the sewer system to operate. M. Conway said the pump stations were at depths that were below the sewer lines. M. Conway said the sewer lines all ran into a large underground well which was essentially a large retaining basin. M. Conway said the multi-ceptor needed to tie into the existing sewer lines and the existing pump station in order to work.

M. Conway said the multi-ceptor was an alternative that was somewhat accepted by the county. M. Conway said the multi-ceptor was a slight digression from the interceptors which was what the county had originally required. M. Conway said the multi-ceptor needed to be located in an area that would intercept all the grease from the different restaurants at the Grand Wailea. Because the multi-ceptor would tie into the existing sewer system, M. Conway said the Grand Wailea also needed to accommodate the grease and sewage that flowed from the properties from the north which were the Marriot and the Wailea Beach Villas. M. Conway said the multi-ceptor unit was pursued due to its large holding capacity which more than accommodated all the grease and sewage from the Grand Wailea. M. Conway said the multi-ceptor was also large enough to accommodate the grease and sewage which flowed downhill from the Marriot and the Wailea Beach Villas.

M. Conway said the site for the multi-ceptor was in an area that would most facilitate the collection of all the grease from all the different restaurants from the Grand Wailea. M. Conway thought the site for the multi-ceptor would also be an area that was least likely to disturb burials, because the area already had existing sewer lines and an existing pump station which was at a depth of at least 30 feet. M. Conway said relocating the multi-ceptor elsewhere on the property of the Grand Wailea would have dramatically increased the overall ground disturbing activities because the multi-ceptor would still need to be installed at a deep depth and additional pipelines would need to be installed to intercept the grease and sewage. M. Conway said the current location for the multi-ceptor was an area which had gone through previous archaeological studies and reviews [during initial construction of the Grand Wailea]. M. Conway thought that because previous work had disturbed the area for the multi-ceptor site, M. Conway thought it was less likely installation of the multi-ceptor would disturb subsurface features and/or sites. D. Hall said the Grand Wailea had gone through the process of archaeological survey for construction of the hotel. D. Hall said the multi-ceptor project was never reviewed by the State Historic Preservation Division (SHPD) and should have followed the procedures of the Hawaii Revised Statute Chapter 6E-42.

W. Frampton asked if the existing pump station and sewer lines were at depths of at least 30 feet to which M. Conway answered yes. W. Frampton did not think archaeological monitoring occurred during installation of the pump station and sewer

lines during the 70s. W. Frampton asked if the multi-ceptor location was in an area that was believed to have been previously disturbed to which M. Conway answered yes.

D. Hall wanted to know the current status of the multi-ceptor project. M. Conway said the Grand Wailea was back to square one in regards to complying with the county mandate and exploring alternative solutions. M. Conway thought the best solution was to install individual grease removal devices (GRD). M. Conway said the grease removal devices were mechanisms that did not rely heavily on human intervention. M. Conway said the grease removal devices were small enough to be located within the facility of each restaurant. M. Conway did not think excavation would exceed a depth of three feet and did not anticipate encountering burials due to excavations occurring well within the fill layers. M. Conway said the county still needed to approve the individual grease removal devices. M. Conway was very optimistic the county would approve the grease removal devices because the Grand Wailea had spent a great deal of money proving there were no other viable alternatives available.

L. Kuloloio wanted to know if the multi-ceptor system would only accommodate the grease and sewage from the Grand Wailea or if the multi-ceptor was supposed to accommodate the grease and sewage from surrounding properties, as well as the grease and sewage from future developments of the area. M. Conway said the multi-ceptor was a system that solved the Grand Wailea's compliance problem with the county. L. Kuloloio asked if the multi-ceptor would only intercept the grease from the seven restaurants at the Grand Wailea to which M. Conway said yes. L. Kuloloio asked if the multi-ceptor would service other facilities other than the Grand Wailea. M. Conway said the Grand Wailea's primary concern was dealing with the grease created from its seven restaurants. L. Kuloloio asked if sewage from properties other than the Grand Wailea flowed into the multi-ceptor to which M. Conway answered yes. L. Kuloloio wanted to know which properties other than the Grand Wailea sewage came from. M. Conway said sewage came from the intercontinental hotel [the Marriot] and newly constructed condominiums [the Wailea Beach Villas].

L. Kuloloio felt the council was being placed in a position to fix someone else's mistake. L. Kuloloio felt the county should have attended today's MLIBC meeting. L. Hazuka said the sewage from the Marriot and the Wailea Beach Villas already flowed to the pump station through the existing sewer lines near the multi-ceptor site on the property of the Grand Wailea. L. Hazuka said the Grand Wailea was simply tying into the existing sewer lines. L. Hazuka said the Grand Wailea was not accommodating any sewage which had not previously flowed to the pump station at the multi-ceptor site. L. Kuloloio wanted to know if any studies had been done to show the amount of grease the restaurants at the Grand Wailea produced since being constructed in the early 90s. M. Conway said there was no study in existence which focused on grease capacity at the Grand Wailea. M. Conway said the amount of grease a restaurant produced depended on what type of food or theme a restaurant had. M. Conway said engineers were able to measure the amount of water that passed through fixture units which eventually passed through grease interceptors. M. Conway said grease interceptors had mechanical devices which controlled the amount of flow to and from the interceptors.

M. Conway said the mechanical devices helped the grease interceptors to function properly. M. Conway said grease interceptors worked as long as the grease was continuously removed.

W. Frampton wanted to know if the Grand Wailea was asking the county to approve alternative devices which were originally proposed. W. Frampton thought the multi-ceptor system was a good concept which would have worked if not for the burials that were encountered. M. Conway said the alternative device the Grand Wailea was asking the county to approve would be an upgrade to the original passive interceptors already in existence. M. Conway said the upgrade to the interceptors would include a mechanical device to help with cleaning and maintenance. M. Conway said the upgrade would drastically reduce the human element of maintaining the passive interceptors.

C. Maxwell asked if the Grand Wailea was seeking approval for individual grease removal devices from the county to which M. Conway said yes. D. Hall asked that the Grand Wailea's representatives return before the council after their meeting with the county to present the council with an update of what had transpired. D. Hall wanted to know if the individual GRDs was a better system then the multi-ceptor. C. Maxwell wanted to know what would happen to the burials that were inadvertently disturbed. R. Hoonan said the GRDs would achieve the same effect as the multi-ceptor, but the difference would be that the GRDs would be installed at individual areas at the source. R. Hoonan said the individual GRDs would exceed the requirements of the mandate if accepted by the county. R. Hoonan said the burials would remain in place if the county approved the proposed alternative.

D. Hall asked if the sewage from the Grand Wailea and the Wailea Beach Villas and the Marriot would continue to flow into the sewage pump station. R. Hoonan said the sewer lines would remain as it currently exists. L. Kuloloio wanted to know if a multi-ceptor system of the same scale with the same problematic elements encountered at the Grand Wailea had been previously used in Hawaii. M. Conway said multi-ceptors were used at the Moiliili shopping center and the Royal Hawaiian shopping center on Oahu. M. Conway said the Marriot at Kaanapali had a multi-ceptor system. M. Conway thought more care needed to be demonstrated to discover what may be subsurface that may possibly be disturbed.

Melissa Kirkendall, Maui archaeologist for SHPD, asked the Grand Wailea to inform the county of SHPD's desire to be included in all reviews pertaining to the GRDs. L. Hazuka clarified to L. Kuloloio that the multi-ceptor project had been stopped due to the burials encountered. L. Hazuka said the Grand Wailea was asking the county to approve the GRD which would be installed within the facilities of each restaurant. D. Hall asked if the GRD had the capability of removing grease mechanically to which M. Conway said yes. L. Kuloloio wanted the excavated hole for the multi-ceptor to be backfilled to original grade. L. Hazuka said ASH needed to complete the screening of the back dirt piles to collect additional human skeletal remains that may be present. L.

Hazuka said the collected remains would be reinterred after ASH had finished screening the piles of dirt.

D. Hall reiterated points M. Conway had made earlier about treating grease as close to the source as possible where water was most hot and the GRD's capability of having grease mechanically removed. M. Conway said the GRDs were very efficient but needed to be approved by the county. C. Maxwell said the council would express their support for approval of the GRD to the county.

**D. Hall moved and W. Frampton seconded, "that the Maui/Lanai Islands Burial Council supports the Grand Wailea's request to install grease removal devices for the nine restaurants on the Grand Wailea property as an alternative to construction of the multi-ceptor system because the grease removal devices will not require the disinterment of primary burials located at the multi-ceptor site."**

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

D. Hall and W. Frampton thanked the representatives of the Grand Wailea for their sensitivity with handling the problems associated with the subject agenda item. R. Hoonan reminded the council that the Grand Wailea still needed the GRDs to be approved by the county. R. Hoonan said the Grand Wailea was never in violation or caused sewage spills which caused the EPA to create the mandate the county was implementing. D. Hall addressed the representatives of the Grand Wailea and said the council was willing to help in any way they could.

**B. INADVERTENT BURIAL DISCOVERY AT HAWAIIAN CEMENT SAND MINING OPERATIONS, SITE 50-50-14-5194, WAILUKU AHUPUAA, WAILUKU DISTRICT, ISLAND OF MAUI, TMK: 3-8-7: 101 PORTIONS**

**Information/Recommendation:** Discussion of inadvertent burial discovery designated Feature 54.

L. Hazuka of ASH introduced herself. L. Hazuka said Diane Guerriero (archaeologist for ASH) was monitoring an excavator during sand mining operations and identified a concentration of human skeletal remains which was designated Feature 54. L. Hazuka said Feature 54 appeared to primarily consist of in situ remains with partial disturbance to the cranium and some long bones. L. Hazuka said D. Guerriero was currently conducting test excavations to determine the in situ portion of the burial and to determine what portion of the burial had been displaced.

D. Hall wanted to know the physical location of Feature 54. L. Hazuka said Feature 54 was located in the expansion area of locale 2. D. Hall said the council was asked at an earlier meeting by Chubby Vicens (formerly of Alexander & Baldwin, Inc.) if burials found in locale 2 could be relocated. D. Hall said the council had expressed their opposition to relocating burials within locale 2 due to the high probability of having other primary burials within the area. L. Kuloloio said the MLIBC had been dealing with [inadvertent burial discoveries at] Hawaiian Cement for many years. L. Kuloloio said he



was nearing the end of his term, serving on the council. L. Kuloloio did not want to retire from the council and leave the problems associated with Hawaiian Cement, Ameron and Alexander & Baldwin (A&B) for future council members to resolve. L. Kuloloio felt it was time for the council to shut down sand mining operations at Hawaiian Cement. L. Kuloloio said there were numerous burials out at Hawaiian Cement which has remained in the field for many years. L. Kuloloio said burials are encountered at Hawaiian Cement every month and it was very frustrating for him as a member of the Maui/Lanai Islands Burial Council to deal with.

D. Hall asked how many burials were at Hawaiian Cement. L. Hazuka thought there were about 65 individuals located at 54 different areas. C. Maxwell said he agreed with what was expressed by L. Kuloloio. C. Maxwell also felt it was time for the burial council to shut down sand mining operations at Hawaiian Cement. C. Maxwell said the amount of burials that had been and continue to be encountered at Hawaiian Cement was an embarrassment for the MLIBC. L. Hazuka said A&B was aware that a burial treatment and preservation plan needed to be prepared. C. Maxwell said the MLIBC was not fulfilling its purpose and it was time for the council to make a stand to stop sand mining at Hawaiian Cement.

**D. Hall moved and Scott Fisher seconded, “that the Maui/Lanai Islands Burial Council recommends that the State Historic Preservation Division, write a letter to Alexander & Baldwin determining that Feature 54 be preserved in place and further, that a [draft] burial treatment plan be prepared for all inadvertent discoveries that has been found to date in the Hawaiian Cement sand mining area and that this draft burial treatment plan be immediately prepared so that the council can review the draft burial treatment plan by its February 2007 meeting.”**

Edward Kaahui wanted to know how long it would take A&B to develop a burial treatment plan (BTP). L. Hazuka thought a BTP could be prepared by the council's February meeting. S. Fisher wanted to know why sand mining operations were allowed to continue without a BTP ever being developed. L. Hazuka said the burials were found during monitoring of sand mining activities. S. Fisher asked if a BTP should have been developed upon the discovery of the first inadvertent burial to which L. Hazuka answered yes. L. Hazuka said ASH wanted to handle the inadvertent discoveries [at Hawaiian Cement] similarly to the burials at Maui Lani in the sense of identifying the larger picture and determining proper treatment for all the burials simultaneously instead of individually on a case by case basis. S. Fisher felt there should be some type of protocol that needed to be followed upon discovering burials. L. Hazuka said a protocol was in place which started with controlled grading from the surface down to a depth of seven feet with excavations occurring at six inch increments. L. Hazuka said controlled grading was completed with a D-6. L. Hazuka said a D-9 was used for mass excavations once controlled grading had reached a depth of seven feet. L. Hazuka said a 50 foot buffer would immediately be erected if a burial was encountered.

W. Frampton wanted to know what the status of the special use permit (SUP) for sand mining operations was. D. Hall did not think the sand mining operation was in

compliance. D. Hall said an SUP was required prior to the issuance of a grading permit. D. Hall thought there were violations with the sand mining operation. L. Hazuka said she was not sure what the status of the SUP was. L. Hazuka said sand mining operations had been allowed to continue over the years in areas zoned for agriculture because grading permits had been issued based on proposed grading plan requests. D. Hall said Hawaiian Cement was in violation of the county code. D. Hall thought SHPD could comment to the county about the status of an SUP for sand mining operations at Hawaiian Cement during review of their grading permit request. L. Kuloloio wanted the BTP to be immediately prepared because the BTP would greatly assist in assuring the burials at Hawaiian Cement received the proper treatment. C. Maxwell asked L. Hazuka to inform the appropriate parties of the council's feelings and of the council's desire to shut down sand mining operations at Hawaiian Cement.

**VOTE: ALL IN FAVOR. The motioned carried unanimously.**

**C. COMPLIANCE REVIEW ON THE PRESERVATION AND BURIAL TREATMENT OF STATE SITE 50-50-16-5421, NIUMALU AHUPUAA, KAUPU, HANA DISTRICT, ISLAND OF MAUI, TMK (2) 1-7-003: 073 AND 016.**

**Information/Recommendation:** Discussion of Feature 10 probable burials and the subsequent identification of a confirmed burial.

Mike Dega of Scientific Consultant Services (SCS) Archaeology introduced himself. M. Dega thought the subject agenda item was last discussed at the September 29, 2005 MLIBC meeting. D. Hall did not recall discussing the subject agenda item. M. Dega said he had minutes of the September 29, 2005 MLIBC meeting. M. Dega said the subject agenda item was listed as item E of the September 29, 2005 minutes. M. Dega introduced John Wilson, the archaeologist from SCS that conducted the field work for the subject agenda item.

M. Dega read the minutes of the September 29, 2005 MLIBC meeting (pages 17 & 18).

**“E. BURIAL SITE IDENTIFIED ON LEFEVRE PROPERTY, NIUMALU AHUPUAA, HANA DISTRICT, ISLAND OF MAUI, TMK: 1-7-3:16**

**Information / Recommendation:** Discussion of burial site identified during archaeological inventory survey.

Mike Dega of SCS archaeology identified himself (Dega handed out copies of a map) and said on Friday, August 12 a human burial was identified within site 5421 as feature 10 during sub-feature 4, test unit 13 compliance work. Dega said the landowner Stephan Lefevre has a BTP which had been accepted and an inventory survey which had been completed [*M. Dega said the inventory survey had also been accepted*]. Dega said mounds 1, 2, and 3 were preserved several years ago as possible burial areas with the orange area representing the buffer zones set around the sites. Dega said Kirkendall had requested SCS to verify if the landowner was in compliance with preserving burial sites as well as

preserving archaeological features on the landscape. Dega said the burial was identified during compliance work. Dega mentioned the compliance work was being written [*M. Dega said the compliance work had been written and accepted by SHPD on September 29, 2006*]. Dega said several previously unidentified features were found in the burial area. Dega said the features found were labeled as 4, 5, 6, 7, and 8 and mentioned the features were all mounds. Dega said part of the compliance work included mapping and recording sites that had been disturbed. Dega said during the compliance work was when feature 4 was identified. Dega said feature 4 was a mound measuring 2.6 meters long by 2.5 meters wide and 0.25 meters in height. Dega said the human skeletal remains were initially identified at 0.25 meters or 50 centimeters below the natural soil surface. Dega said once the remains were identified SCS had stopped work. Dega said the burial was completely covered for protection. Dega said feature 4 was found outside of the buffer area. Dega said the buffer area was still intact with orange construction fencing up and maintained. Dega said once the burial was discovered the orange construction fence was immediately moved to encompass the burial within the buffer zone [*M. Dega said the burial preservation area as well as the buffer for the preservation site were both extended*].”

D. Hall asked if the mound with the confirmed burial had been previously identified. M. Dega said three mounds were identified during an inventory survey and preserved as possible burial sites. M. Dega said J. Wilson identified five additional mounds (subsequently labeled 4, 5, 6, 7 and 8) within the general area during SCS’s compliance work. M. Dega said a burial was confirmed during compliance work and testing of mound 4. At the MLIBC meeting of September 29, 2005, M. Dega said SCS was to resubmit a revised BTP to encompass mounds 1-8. C. Maxwell wanted to know the current status of the agenda item. M. Dega said SCS was awaiting a final review and acceptance [letter] of the inventory survey and compliance work from SHPD in order to update, revise and resubmit the BTP. D. Hall wanted to be sure the council was afforded the opportunity to be consulted on the revised BTP that would be submitted by SCS. D. Hall also wanted to be sure the revised BTP would be reviewed and accepted prior to the completion of construction at the subject TMK. M. Dega said he would bring the revised BTP to the January MLIBC meeting.

**D. Hall moved and W. Frampton seconded, “that the Maui/Lanai Islands Burial Council recommends that the revised burial treatment plan for TMK: 1-7-003:016 be submitted in draft form to the council for review and recommendations at its January meeting.”**

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

Given the history and problems associated with the subject agenda item and property, M. Kirkendall said [upon any future reviews] SHPD would recommend that no construction take place until the subsequent plan(s) were in place.

**D. CORRESPONDENCE FROM BISHOP MUSEUM DATED OCTOBER 25, 2006 REGARDING MAKING CLAIM TO HUMAN REMAINS UNDER NAGPRA LAW**

**Information/Recommendation:** Discussion on the human remains inventory of two individuals from Lanai, curated at Bishop Museum.

H. Rodrigues said the subject correspondence had been forwarded to him from Oahu. H. Rodrigues said the correspondence was old and appeared to have been dated in 2002. C. Maxwell suggested the Lanai representative, Pua Paoa, work with H. Rodrigues on the issue. P. Paoa said there were people or groups within the community on Lanai that may be able to assist with the particular agenda item. P. Paoa said she would work with H. Rodrigues on the agenda item.

**E. CASE UPDATES / OTHER INADVERTENT DISCOVERIES**

**Information / Recommendation:**

**Inadvertent Burial Discovery at Consolidated Baseyards, Waikapu Ahupuaa, Wailuku District, Island of Maui, TMK: 3-8-7: 89, 143, and 144**

**Information/Recommendation:** Discussion of inadvertent discovery on November 29, 2006.

W. Frampton recused himself from the meeting because he was one of several landowners involved with the agenda item. W. Frampton introduced his business partner, Dave Ward (also a landowner); his brother, Dean Frampton (also a landowner); another landowner, Roderick Fong and M. Dega of SCS, the hired archaeological firm. W. Frampton said they were at the meeting to give the council an update of the proposed project. W. Frampton said D. Ward would give a brief overview of the project and a brief history of the property.

*D. Ward handed out two documents.*

D. Ward said the first document (two pages) contained the names of the property owners, the history of the property and a timeline of what had transpired. D. Ward said the second page was a map of the project's location. D. Ward said the second document was a site plan map. D. Ward said the name of the project was Consolidated Baseyards Subdivision which was comprised of 23.2 acres. D. Ward said R. Fong has a Baseyard on the left side of Waiko Road if heading towards Kuihelani Highway which R. Fong has owned for over 10 years. D. Ward said the project proposed to develop 35 lots to construct a light industrial subdivision. D. Ward said R. Fong got involved with the project due to R. Fong's interest in providing local businesses and light industrial type companies with the opportunity of expanding their businesses and owning some land. D. Ward said the subject property (23 acres) was purchased by R. Fong from A&B in 2000. D. Ward said the property had been previously graded prior to R. Fong's acquisition, although the extent of how much of the property had been graded was not known.

D. Ward said an inventory survey had been developed by ASH in August/September of 2000 and did not identify any historic sites. D. Ward said a monitoring plan was also recommended and approved in 2000. D. Ward said about 12 acres had been graded to start developing the property. D. Ward said initial grading of the 12 acres had occurred from 2001-2003. D. Ward said that all grading had been archaeologically monitored [and no historic sites were identified]. D. Ward said R. Fong had a special use permit from the county to grade and install temporary water utilities. D. Ward said an environmental assessment was started in October of 2003. D. Ward said the monitoring plan submitted by ASH had been approved in April of 2004. D. Ward said the project entered final subdivision approval in September of 2006 and also finished grading the rest of the property in that same month. D. Ward said grading [in September of 2006] had been monitored by SCS and did not identify any historic sites. D. Ward said a large trench measuring 20 feet in width by 20 feet in depth was being excavated to install sewer lines. D. Ward said excavation of the trench started in early November of 2006. D. Ward said a burial was inadvertently discovered during excavation of the trench. D. Ward said about 85% of the sewer line had been trenched.

M. Dega said SCS had started monitoring the project on August 29 and did not encounter the burial until three months later. M. Dega said trenching had stopped once the burial was discovered. M. Dega said skeletal remains were found within the trench and also within a back dirt pile. M. Dega said the remains within the trench consisted of metatarsals, vertebrae and a cranium. M. Dega said the rest of the remains were collected after screening the back dirt pile. M. Dega said SCS believed the remains to be of a traditional native Hawaiian burial and of an adult female. L. Kuloloio asked for the location of the burial to be identified on the map handed out (document 2). W. Frampton identified the burial on the site plan map. C. Maxwell asked if the remains were of an in situ burial. M. Dega said the remains were of a primary in situ burial. D. Hall wanted to know how much of the burial was collected from the back dirt pile. M. Dega said about 95% of the burial had been collected from the back dirt pile. M. Dega said the remains were all disarticulated.

L. Kuloloio felt the council needed visual information [charts with specific descriptions] to better understand the condition and circumstances in which the burial was found. W. Frampton said half of the project area had been previously grubbed and graded. W. Frampton said the remaining project area had been recently grubbed and graded about four months ago. W. Frampton said no historic sites had been identified during any grading or grubbing activities. W. Frampton said the burial was found during trenching for the sewer line. L. Kuloloio wanted to know if only one burial had been found since the [Consolidated Baseyards] project had started to which W. Frampton answered yes. L. Kuloloio wanted to know the depth at which the sewer line would be installed. R. Fong said the sewer line would be installed at six to seven feet. L. Kuloloio wanted to know the depth at which the burial was found. W. Frampton said the burial was found at about 4.5 feet deep. Despite only one burial having been encountered, L. Kuloloio reminded the council there was a good chance other burials were present beneath the surface of the project area.

D. Hall wanted to know if the sand the burial was identified in was a sand pocket or part of a continuous, sand dune matrix. M. Dega thought the burial was found in a pocket of sand. M. Dega said SCS would be able to give a better assessment as trenching continued. D. Hall wanted to know if there were more remains that had not been identified within the trench. Based on the inventory of remains collected from the back dirt pile and identified within the trench, M. Dega thought SCS had all the remains of the burial except for the clavicle.

L. Kuloloio asked if the trench was 20 feet wide and 20 feet deep. W. Frampton said the trench was generally 20 feet deep but at certain areas of the trench, the depth varied due to grade. L. Kuloloio wanted to know the depth at which the burial was encountered. M. Dega said the burial was encountered at 4.5 feet from the surface. L. Kuloloio wanted information pertaining to the stratigraphy of the burial's location. M. Dega said the sand had slumped over the area where the burial was located. D. Hall said she would visit the site with H. Rodrigues.

**Inadvertent Burial Discoveries at Victor Campos Parcel, Wailuku Ahupuaa, Wailuku District, Island of Maui, TMK: 3-4-39:79**

**Information/Recommendation:** Discussion of letter dated May 23, 2006 from W. R. Fortini, Jr. of Scientific Consultant Services, Inc. to SHPD cultural historian Hinano Rodrigues, and recommended treatment for inadvertent discoveries.

*W. Frampton rejoined the MLIBC.*

M. Dega of SCS introduced himself and said Bill Fortini should not be writing any letters unless he (M. Dega) had looked at the letter first. C. Maxwell asked if the letter written by B. Fortini which had been included in last month's MLIBC packets was written without M. Dega's knowledge. M. Dega said yes and that B. Fortini was an archaeologist of SCS. M. Dega said he was the principal investigator for the particular agenda item and it was his responsibility to look over the project. D. Hall said a map depicting the location of the burials referenced in the letter written by B. Fortini should have been attached. D. Hall said the letter written by B. Fortini seemed to indicate that burials were removed.

M. Dega said burial 2 was found during monitoring and covered by a blue tarp. M. Dega said burial 3 was discovered near a rock alignment high on the upper section of the dune closest to Iao Valley. M. Dega said burial 4 was discovered at the base of the dune between burials 2 and 3. D. Hall read the second sentence on the second page of the letter written by B. Fortini under the heading Additional Work. D. Hall wanted to know if SHPD had made a determination to remove the burials to which M. Dega answered no. M. Dega said none of the burials were removed. D. Hall read more of the letter written by B. Fortini and said the letter was very confusing. M. Dega thought B. Fortini may have written the letter as a summation of events. M. Dega said he had spoken with H. Rodrigues and confirmed that SHPD had made no determination for the burials at the Campos property.

D. Hall said construction of the retaining wall had been completed and the area behind the retaining wall had been backfilled. D. Hall said the remains which had eroded out of the dune face were no longer visible. C. Maxwell said V. Campos circumvented the council of the opportunity to perform any type cultural ceremony for the burials. C. Maxwell felt V. Campos should have the retaining wall torn down so the burials could be properly reinterred. C. Maxwell felt V. Campos was in violation of the law. C. Maxwell asked deputy attorney general, Vince Kanemoto if any violations of the law had been committed. V. Kanemoto was not sure and suggested the council have DOCARE (Division of Conservation and Resource Enforcement) investigate the issue. W. Frampton wanted to know what the status of V. Campos's case was. M. Dega said V. Campos was awaiting a determination from SHPD as to whether the burials should be preserved in place or relocated. M. Dega thought burial 2 could be reached by shoveling the sand out of the area. M. Dega said burial 3 was still behind of the wall and could be identified through screening. C. Maxwell wanted to know what specific law was violated by V. Campos. V. Kanemoto said all the evidence and facts needed to be collected and assessed in order to determine if any statute had been violated. V. Kanemoto said he was unaware of all the facts surrounding the Campos case and thought an investigation needed to occur.

L. Kuloloio thought the council should write a letter to V. Campos to express their concerns. L. Kuloloio thought B. Fortini needed to provide the council with answers and clarifications pertaining to the letter he (B. Fortini) had written. C. Maxwell agreed with V. Kanemoto and thought the Campos issue needed to be investigated by DOCARE. V. Kanemoto said a new law in the Hawaii Revised Statute (HRS) 6E-72 had been passed which made "taking, appropriation, excavation, injury, destruction or alteration of a burial site," a criminal offense. V. Kanemoto said violation of HRS 6E-72 was a misdemeanor, punishable by a maximum of up to 1 year imprisonment and/or up to a \$25,000.00 fine. V. Kanemoto suggested the possibility of having the Maui Police Department investigate the issue or the Criminal Justice Division of the Attorney General's office or have the Maui County prosecutor look into the matter. M. Dega said SHPD may also be investigated and may ultimately need to answer the question of why a determination had not been made for over three years. M. Dega thought the matter could be resolved internally and did not think the matter was at a point which warranted legal action.

W. Frampton remembered one of the main issues for the Campos property being completing construction of the retaining wall to help stabilize the dune. D. Hall said the backfilling of the retaining wall should have been archaeologically monitored. D. Hall said the backfilling was not monitored. D. Hall said backfilling had occurred after Jenny Pickett (assistant Maui archaeologist) and M. Kirkendall had pointed out the displaced scattered remains which needed to be collected. D. Hall said V. Campos had verbally agreed to preserve burial 2 in place. D. Hall thought burial 2 needed to be reassessed to determine its current condition. D. Hall thought the scattered remains of the burial 3 needed to be collected through screening. D. Hall said proper treatment for the remains of burial 4 needed to reach some sort of conclusion.

C. Maxwell felt V. Campos, over the years, had been given many opportunities to do the right thing with respect to proper treatment of the burials. C. Maxwell felt V. Campos was in violation of the law and wanted to know why V. Campos had been given so many chances. V. Kanemoto reasserted his position that a full blown investigation needed to occur to assess all the facts in order to make a thorough determination as to whether legal action should be pursued.

L. Kuloloio wanted to know if completion of stabilizing the dune was still an option. L. Kuloloio thought sand could be imported onto the property to complete backfilling and stabilization of the dune. D. Hall said V. Campos on his own volition, ceased construction of the retaining wall on numerous occasions and for long periods of time. D. Hall said V. Campos completed construction of the retaining wall completely on his own time and was not delayed by SHPD. D. Hall said backfilling the wall without an archaeological monitor completely left the status of burial 2 and 3 in limbo. M. Dega said V. Campos had agreed to keep burial 2 in place. D. Hall asked J. Pickett if V. Campos was made aware of the remains of burial 4. J. Pickett said burial 4 was intact at the base of the dune and did not have any scattered remains. J. Pickett said burial 3 had partially collapsed which caused some remains to scatter. J. Pickett thought the remains of burial 4 may have been exposed from the weather and/or previous excavations. J. Pickett said she identified burial 4 while assessing burial 3. D. Hall thought there had been yellow construction tape around the area of burial 3. D. Hall said she had visited the site and it appeared the sand pile which contained scattered remains from burial 3 had been used to backfill the retaining wall. D. Hall said the Campos issue was a matter that needed to be addressed immediately. M. Dega said the council could make a recommendation. D. Hall wanted burial 2 to be re-identified and reassessed to ascertain the current status of the burial. D. Hall wanted a stabilization plan developed for burial 3 or a plan to recover burial 3 if stabilization was not an option.

L. Kuloloio wanted to know what the finish height of the retaining wall was. M. Dega thought the measurements for the retaining wall were discussed at previous MLIBC meetings and should be in the minutes. C. Maxwell felt the issue as a whole needed to be reevaluated to get a better understanding of what the current situation is and what will be done to address the concerns of the council as expressed today. W. Frampton recalled seeing plans for the retaining wall as well as plans for proposed building which would be constructed. W. Frampton suggested an “as built” plan [view map] be developed which also re-identified the current locations of each burials. M. Dega recalled a BTP for the Campos property being specific only for construction of the retaining wall and that all additional or future construction needed to come before the MLIBC. C. Maxwell thought more site inspections needed to be conducted possibly by SHPD staff and/or members of the burial council. D. Hall said a “cherry picker” may have to be used to assess the condition of burial 3.

**Inadvertent Burial Discoveries at 101 Lunalilo Road, Wailuku Ahupuaa, Wailuku District, Island of Maui, TMK: 3-4-38: 37**



**Information/Recommendation:** Update on an inadvertent finds of July 21 and September 21, 2006.

H. Rodrigues, cultural historian for SHPD said the construction of the driveway had been completed and did not encounter any additional burials. H. Rodrigues said the *iwi* from the property were being curated at the SHPD, Maui office. H. Rodrigues said he was awaiting a BTP from M. Dega of SCS to insure proper treatment of the *iwi*. H. Rodrigues said the landowners were open to any suggestions made by SHPD and/or the MLIBC. D. Hall wanted to be sure that only construction of the driveway had been completed. H. Rodrigues confirmed that only the driveway had been completed and all other improvements to the property were in the permit process of the county. M. Dega said SCS had documented seven archaeological features. D. Hall asked if an after-the-fact permit had been reviewed to which M. Kirkendall answered yes. D. Hall said construction at the subject property had been initiated without the proper permits. D. Hall addressed H. Rodrigues and wanted to be sure the BTP for the subject property was accepted and approved by SHPD prior to the completion of all construction activities. D. Hall said it was less likely for property owners to commit to a BTP after all construction activities had been completed. H. Rodrigues assured the council the property owners would commit to a BTP. V. Kanemoto reminded the council that a new law recently passed made BTPs legally enforceable.

#### **IV. ANNOUNCEMENTS**

C. Maxwell wanted to know the status of the “Ebay poo.” H. Rodrigues said SHPD had written a letter to Tim Liu-Kwan, the attorney for General Groves Properties (the owner of Whalers Village), and was awaiting a response. H. Rodrigues said T. Lui-Kwan had requested to be on today’s MLIBC agenda. H. Rodrigues informed the council that SHPD has been trying to expedite the matter and was hopeful to receive a response from T. Lui-Kwan by the end of December. C. Maxwell wanted SHPD to follow up and pursue the issue if no response was received by T. Lui-Kwan. H. Rodrigues assured the council he would aggressively pursue the issue.

C. Maxwell thanked Everett Dowling of Dowling Company for use of space in a private facility to store the *iwi* recovered from Hamakuapoko. C. Maxwell said E. Dowling had provided space for the *iwi* for the past six months. H. Rodrigues said the *iwi* had been moved into his office at SHPD’s Maui office annex building. H. Rodrigues said he was encountering roadblocks with A&B Properties Inc. H. Rodrigues said A&B wanted an SMA (special management area) or SMX (special management exemption) to be filed with the county. H. Rodrigues said a legal agreement was also being developed which needed to be signed by A&B and SHPD. C. Maxwell suggested he and D. Hall along with H. Rodrigues meet with representatives from A&B to hopefully expedite reinterment of the Hamakuapoko burials.

D. Hall requested the inadvertent burial discovery on November 30, 2006 at Waiohuli, Department of Hawaiian Home Lands be place on the MLIBC’s next regularly scheduled meeting.

**V. ADJOURNMENT**

**D. Hall moved and W. Frampton seconded, “to adjourn the meeting at 12:05 pm.**

**VOTE: ALL IN FAVOR. The motion carried unanimously.**

Respectfully Submitted,

Kawika Farm  
Clerk Stenographer II  
State Historic Preservation Division